

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FRESH FRANCHISE LLC,

USDC SDNY  
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DATE FILED: 1/31/2023

Plaintiff,

-against-

FRESH BEGINNINGS YONKERS, LLC,  
JAMES OLIVER and JAMES COUGHLIN,

Case No. 7:23-cv-423 (NSR)

**PRELIMINARY INJUNCTION**

Defendants.

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WHEREAS, plaintiff Fresh Franchise LLC (“Fresh & Co”) filed a motion by order to show cause for a temporary restraining order and preliminary injunction (Doc. No. 7) (the “Motion”);

WHEREAS, on January 18, 2023, the Court entered a temporary restraining order and scheduled a hearing on Fresh & Co’s Motion for January 25, 2023 at 2:00 p.m. (Doc. No. 15);

WHEREAS, as ordered by the Court, Fresh & Co served the Complaint and papers supporting its Motion upon defendants Fresh Beginnings Yonkers, LLC, James Oliver and James Coughlin (collectively, “Defendants”) by email;

WHEREAS, as further ordered by the Court, Fresh & Co served the same papers by FedEx on January 24, 2023;

WHEREAS, on January 25, 2023, the Court held a hearing on Fresh & Co’s Motion (the “Hearing”);

WHEREAS, Defendants failed to submit any opposition to the Motion in advance of the Hearing and did not appear at the Hearing despite having received due notice of it;

WHEREAS, the Court having considered the Motion, supporting memorandum, and affirmations supported in support thereof, including the annexed exhibits, and having heard oral

argument by counsel for Fresh & Co at the Hearing; finds that Fresh & Co is entitled to a preliminary injunction, as set forth in the Complaint and motion papers, because Fresh & Co has established: (1) a likelihood of success on the merits for breach of the Lanham Act and breach of the parties' franchise agreement, (2) it will suffer irreparable harm absent the injunction, (3) the balance of hardships favors Fresh & Co, and (4) the injunction will serve the public interest.

**THEREFORE** it is hereby ORDERED as follows:

1. Fresh & Co's Motion for a Preliminary Injunction is GRANTED.
2. For the duration of this action, Defendants, or any persons acting in concert with them, shall be enjoined from:
  - a. Operating a Fresh & Co restaurant at 2360 Central Park Avenue, Yonkers, New York (the "Yonkers Location");
  - b. Using Fresh & Co's trade names, trademarks, service marks and trade dress that Fresh & Co designates for use in connection with each Fresh & Co restaurant, including the current mark, "FRESH&CO" (USPTO Registration Nos. 7565012 and 4349924) and the trademarks "JUST MADE. JUST FOR YOU" and "INVEST IN HEALTHY" (USPTO Registration Nos. 4457679 and 6120078).
  - c. Violating the non-compete obligations set forth in Articles 14 and 16 of the Franchise Agreement, to wit, Defendants may not own, maintain, engage in, be employed as an officer, director, or principal of, lend money to, extend credit to, or otherwise have any interest in or involvement with any food service business which is the same as or substantially similar to Fresh & Co or offers to sell or which sells any products or services which are the same or substantially similar to any of the products or services offered by Fresh & Co including but not limited to salads, grain bowls, soups, sandwiches and other pre-packaged items, or otherwise generates twenty percent or more of its revenue from the sale of salads, grain bowls, soups, and/or sandwiches within a twenty mile radius of the Yonkers Location or any other Fresh & Co restaurant;
  - d. Using or disclosing any of Fresh & Co's documents, papers, notes and other materials, as well as any work products containing or derived from the proprietary information or from the knowledge of or in connection with the Yonkers Location (collectively, "Confidential Information"). Such Confidential Information shall also include, but is not limited to, Fresh & Co's

customer lists, procedures, techniques, special recipes, ingredients, menu items and proprietary materials.

3. In accordance with Section 19(B) of the parties' Franchise Agreement dated October 15, 2020, Fresh & Co will not be required to post a bond. SO ORDERED.

Dated: January 31, 2023  
White Plains, New York

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Hon. Nelson S. Román  
United States District Judge